



In Reply Refer To:
18-CPA-0310

United States Department of the Interior

FISH AND WILDLIFE SERVICE

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Peter R. Blum, Chief
Planning Division - Philadelphia District
U.S. Army Corps of Engineers
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390
ATTN: Mary.E.Brandreth@usace.army.mil

SEP 28 2018

Dear Mr. Blum:

The U.S. Fish and Wildlife Service (Service) received your August 1, 2018 request for streamlined (Tier 2) formal consultation regarding U.S. Army Corps of Engineers, Philadelphia District (Corps) proposed beach re-nourishments activities in the approved Cape May Inlet to Lower Township (Cape May City), and Lower Cape May Meadows, Cape May County, New Jersey. The Corps also proposes an expansion of Borrow Area K because of low sand availability due to the presence of unsuitable gravel and seashells. This response serves as Tier 2 streamlined consultation pursuant to the Service's December 2005 Programmatic (Tier 1) Biological Opinion on the Effects of Federal Beach Nourishment, Re-nourishment, Stabilization, and Restoration Activities along the Atlantic Coast of New Jersey within the Corps, Philadelphia District on the Federally Listed (threatened) Piping Plover (*Charadrius melodus*) and Seabeach Amaranth (*Amaranthus pumilus*) (PBO). This Tier 2 (streamlined) consultation covers only the proposed re-nourishment to be completed between November 2018 and February 2019 and includes potential direct and indirect effects to federally listed species that may occur during and after construction. Subsequent re-nourishment events, including the proposed beachfill proposed for Lower Cape May Meadows in year 2020, will be considered separate Federal actions and will require individual Tier 2 consultations.

AUTHORITY

This response is provided pursuant to Section 7 of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA) to ensure the protection of endangered and threatened species and does not address all Service concerns for fish and wildlife resources. These comments do not preclude separate review and comment by the Service directed to the Corps via the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. 661 *et seq.*) for any permits required pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*); or comments on any forthcoming environmental documents

pursuant to the National Environmental Policy Act of 1969 (83 Stat. 852, as amended; 42 U.S.C. 4321 *et seq.*).

CONSULTATION HISTORY

Correspondence was exchanged between the Service and the Corps regarding the Cape May Inlet to Lower Township and Cape May Meadows projects. A chronology of key correspondences is provided below.

August 1, 2018	The Corps provided the request for Tier 2 review via regular mail. The request was sent to our old address and it was returned to the sender.
August 28, 2018	The Corps provided an electronic copy of the Tier 2 request and provided a link to the draft Environmental Assessment for expansion of Borrow Area K.
August 28, 2018	Via e-mail, the Service notified the Corps that, before proceeding with the subject Tier 2 review, this office was awaiting a response to our letter to the Corps on compliance issues associated with the PBO (Beach Management Plans, predator management, etc.).
September 13, 2018	The Corps fulfilled the request of the Service on PBO compliance.

PROJECT DESCRIPTIONS

Starting in November 2018, the Cape May Inlet to Lower Township (Cape May City) project would entail re-nourishing beaches from the 3rd Avenue groin in Cape May to the U.S. Coast Guard Training Center beach at Cape May Inlet. The Corps proposes to initiate this re-nourishment cycle in November 2018 and complete the project by the end of February 2019.

At an undisclosed date in year 2020, the project would entail re-nourishing beaches from the 3rd Avenue groin in Cape May City to the Central Avenue groin in Cape May Point for approximately 1.9 miles of shoreline. The Service is unable to include in this Tier 2 letter a review of this portion of the project without first obtaining a project schedule from the Corps. Further consultation is requested by the Service.

The quantity of sand material proposed to be utilized for both projects is estimated to be approximately 450,000 cubic yards. The borrow area identified as the current primary sand source for these projects, Borrow Area K, is located approximately 14,000 feet (2.6 miles) south of the Cape May jetties. The proposed expansion of Borrow Area K is located immediately adjacent to the area that is being currently used as a sand source. The expansion of Borrow Area K is approximately 312 acres.

ADHERENCE TO MEASURES TO MINIMIZE IMPACTS TO FEDERALLY LISTED SPECIES

Relevant conservation measures proposed by the Corps for protection of federally listed species, and reasonable and prudent measures imposed by the Service to minimize take of federally listed species, are specified within the PBO and are applicable to all Tier 2 projects carried out under the Corps' program. All applicable measures to protect piping plovers will be followed during the 2018-19 re-nourishment from the 3rd Avenue groin in Cape May to the U.S. Coast Guard Training Center beach at Cape May Inlet:

- The beach nourishments will be conducted outside the piping plover nesting season (November 2018 through February 28, 2019). If the Corps needs to extend project activities in this area beyond February 28, 2019, please contact this office to discuss conservation measures for the piping plover, which may include the presence of a qualified piping plover monitor, as proposed by the Corps. According to the New Jersey Endangered and Nongame Species Program (Davis pers. comm. 2017, 2018), there were no occurrences of piping plovers nesting in this project area in 2017 and 2018.
- All equipment must be removed by the end of February 2018.

There have been no known occurrences of seabeach amaranth since 2003, when one plant was documented at Cape May Point State Park.

The federally listed (threatened) red knot (*Calidris canutus rufa*) occurs in low numbers in November during the end of their fall migration. The Service concurs that re-nourishment activities in this project area are not likely to adversely affect the red knot and all effects are found to be discountable.

The re-nourishment of beaches from the 3rd Avenue groin in Cape May City to the Central Avenue groin in Cape May Point will require a separate Tier 2 review and letter, once the Corps provides the project schedule. Although piping plovers have not nested in this project area in the last four years, the beach habitat may remain suitable for nesting in 2019 and 2020.

The Service has no objections to the proposed expansion of Borrow Area K, but requests that such expansion be coordinated with the National Marine Fisheries Service (NMFS). The Service will concur with the recommendations provided by NMFS.

STATUS OF THE SPECIES

Relevant biological and ecological information for the piping plover and seabeach amaranth was provided to the Corps in the PBO. That information remains pertinent and was considered by the Service in formulating this Tier 2 Biological Opinion.

ENVIRONMENTAL BASELINE

The environmental baseline for the Corps' overall program for Federal beach nourishment, re-nourishment, stabilization, and restoration activities along the Atlantic Coast of New Jersey within the Philadelphia District was established and fully described within the PBO. New information regarding the status of the piping plover and seabeach amaranth within the project area since issuance of the PBO has become available. Specifically, piping plovers have nested within and in the vicinity of the proposed re-nourishment areas, but not in recent years. No seabeach amaranth plants were found during surveys since 2003. All other information described within the PBO remains pertinent and was considered by the Service in formulating this Tier 2 Biological Opinion.

EFFECTS OF THE ACTION

Following review of the information provided by the Corps regarding the Cape May Inlet to Lower Township re-nourishment project, the Service has determined that the potential effects of the project are mostly consistent with those addressed in the PBO and are hereby incorporated by reference. No seasonal restriction to protect piping plovers is necessary because the Corps proposes to re-nourish the project area between the 3rd Avenue groin in Cape May to the U.S. Coast Guard Training Center beach at Cape May Inlet between November 2018 and February 28, 2019. The Service cannot assess the effects of the re-nourishment of beaches from the 3rd Avenue groin in Cape May City to the Central Avenue groin in Cape May Point without a proposed work schedule.

Following beach nourishment in other areas of New Jersey, piping plovers have established nesting in previously unoccupied sites, and seabeach amaranth has colonized suitable habitats created by beach re-nourishment. However, piping plover nesting and productivity on such stabilized beaches (where no habitat enhancement occurs) is generally lower than on un-stabilized beaches where over-wash zones and or tidal pools are available. Therefore, it is likely that piping plovers may nest or attempt to nest within the subject project areas following the fill, and productivity is anticipated to be lower than on un-stabilized beaches. The stabilized beaches with habitat enhancement within the subject project areas have attracted piping plovers to nest, but nests have often been destroyed by predators.

CONCLUSION

Actions and effects associated with the Cape May Inlet to Lower Township and the Lower Cape May Meadows re-nourishment projects are consistent with those identified and discussed within the PBO. After reviewing the size and scope of the project, the environmental baseline, the status of federally listed species within the project areas, and the effects of the action, it is the Service's Biological Opinion that the 2018-19 Cape May Inlet to Lower Township re-nourishment project is not likely to jeopardize the continued existence of the piping plover or seabeach amaranth. No Critical Habitat has been

designated for these species within the project area; therefore, no Critical Habitat will be affected.

INCIDENTAL TAKE STATEMENT

Section 9 of the ESA and the Federal regulation pursuant to Section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in the death or injury to listed species by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of carrying out an otherwise lawful activity.

Under the terms of Section 7(b)(4) and Section 7(o)(2), taking that is incidental to, and not intended as part of the agency action is not considered a prohibited taking under the ESA, provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement. The indirect effects of the 2016-17 Cape May Inlet to Lower Township and Lower Cape May Meadows re-nourishment projects are anticipated to result in harm in the form of reduced habitat quality along portions of approximately 174,500 linear feet of shoreline. The type and amount of anticipated incidental take is consistent with that described in the PBO and does not cause the total annual level of incidental take in the PBO.

REASONABLE AND PRUDENT MEASURES AND TERMS AND CONDITIONS

To be exempt from the take prohibitions of Section 9 of the ESA, the Corps must implement all pertinent reasonable and prudent measures and terms and conditions, as stipulated in the PBO, to minimize the impact of anticipated incidental take of plovers. The Service has determined that the following new reasonable and prudent measures beyond those specified in the December 2005 Tier I PBO are needed to minimize the impact of incidental take anticipated for the subject re-nourishment project:

- If the Corps needs to extend project activities (included staging) from the 3rd Avenue groin east to Cape May Inlet beyond February 28, 2019, please contact this office to discuss conservation measures for the piping plover, which may include the presence of a qualified piping plover monitor, as proposed by the Corps.

The Corps has a continuing duty to regulate the activity covered by this incidental take statement. If the Corps (1) fails to demonstrate clear compliance with the RPMs and their implementing terms and conditions in this Biological Opinion; or (2) fails to require Corps staff, contractors, cooperators, and/or permittees to adhere to the terms and

conditions of the incidental take statement; and/or (3) fails to retain oversight to ensure compliance with these terms and conditions, the protective coverage of Section 7(o)(2) of the ESA may lapse.

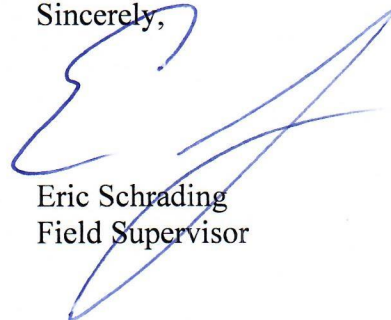
REINITIATION - CLOSING STATEMENT

This concludes Tier 2 formal consultation on the effects of the Corps' proposed 2018-19 beach re-nourishment of Cape May Inlet to Lower Township. As provided in 50 CFR Section 402.16, re-initiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or Critical Habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or Critical Habitat that was not considered in this opinion; or, (4) a new species is listed or Critical Habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending re-initiation.

The re-nourishment of beaches from the 3rd Avenue groin in Cape May City to the Central Avenue groin in Cape May Point will require a separate Tier 2 review and letter, once the Corps provides the project schedule. Although piping plovers have not nested in this project area in the last four years, the beach habitat may remain suitable for nesting in 2019 and 2020.

Please contact Carlo Popolizio at (609) 38-5271 if you have any questions or require further assistance regarding threatened or endangered species.

Sincerely,



Eric Schrading
Field Supervisor